



POLICE DEPARTMENT

In the Matter of the Disciplinary Proceedings : X

- against - : FINAL

Police Officer Sean Maxwell : ORDER

Tax Registry No. 937051 : OF

Housing Borough Manhattan : DISMISSAL

Police Officer Sean Maxwell, Tax Registry No. 937051, [REDACTED]

[REDACTED], having been served with written notice, has been tried on written Charges and Specifications numbered 2017-17485, as set forth on form P.D. 468-121, dated May 30, 2017, and amended on January 10, 2019, and after a review of the entire record, is found Guilty as charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Sean Maxwell from the Police Service of the City of New York.

DERMOT F. SHEA  
POLICE COMMISSIONER

EFFECTIVE: 2/27/2020



POLICE DEPARTMENT

December 6, 2019

-----X-----  
In the Matter of the Charges and Specifications : Case No.  
- against - : 2017-17485  
Police Officer Sean Maxwell :  
Tax Registry No. 937051 :  
Housing Borough Manhattan :  
-----X-----

At: Police Headquarters  
One Police Plaza  
New York, NY 10038

Before: Honorable Jeff S. Adler  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Anna Krutaya, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondent: Peter Brill, Esq.  
Brill Legal Group, P.C.  
306 5th Avenue, Penthouse  
New York, NY 10001

To:

HONORABLE DERMOT F. SHEA  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038

## CHARGES AND SPECIFICATIONS

1. Said Police Officer Sean Maxwell, 17th Precinct, while off duty, on or about May 28, 2017, did wrongfully engage in conduct prejudicial to the good order efficiency and discipline of the Department, to wit; said Police Officer inappropriately displayed his firearm to civilians, during an off-duty verbal dispute, where there was no police action involved.

P.G. 203-10, Page 1, Paragraph 5

GENERAL REGULATIONS -  
PROHIBITED

2. Said Police Officer Sean Maxwell, 17th Precinct, while off duty, on or about May 28, 2017, engaged in conduct prejudicial to the good order and efficiency of the Department, to wit: said Police Officer engaged in a verbal dispute with another patron, Person A.

P.G. 203-10, Page 1, Paragraph 5

GENERAL REGULATIONS -  
PROHIBITED

3. Said Police Officer Sean Maxwell, while assigned to Housing Bureau Manhattan, while on duty, on or about May 21, 2018, engaged in conduct prejudicial to the good order and efficiency of the Department, to wit: said Police Officer, made inaccurate statements regarding his reasons for stopping and exiting his personal vehicle on May 28, 2017. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5

GENERAL REGULATIONS -  
PROHIBITED

4. Said Police Officer Sean Maxwell, 17th Precinct, while off duty, on or about May 28, 2017, after being involved in an off-duty incident, failed to remain on scene and failed to notify the Operations Unit of the said incident. *(As amended)*

P.G. 212-32, Page 1, Paragraph 1 & Note

OFF-DUTY INCIDENTS  
INVOLVING UNIFORMED  
MEMBERS OF THE SERVICE

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on October 23 and October 24, 2019. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called [REDACTED] Police Department Detective Robert Leonard, Sergeant Christopher Skartsiaris, Police Officer Christopher Foy, and NYPD Sergeant Megan Fortunato as witnesses. The Department also introduced the hearsay accounts of three civilian witnesses. Respondent called NYPD Captains Joseph Tompkins and Denis O'Hanlon as

character witnesses and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent guilty, and recommend that he be dismissed from the Department.

## ANALYSIS

This matter began early in the evening of May 28, 2017, when Respondent, who was off-duty at the time, drove his personal vehicle through a stop sign at the intersection of [REDACTED] [REDACTED]. At the time he did so, the residents of the house on the northwest corner of the intersection were having a barbecue, with many children present. One of the adults attending the party, Person A, yelled toward Respondent about running the stop sign and the need to drive more carefully. Respondent stopped and exited his vehicle. It is undisputed that Respondent displayed his firearm during the ensuing encounter; what is contested are the circumstances surrounding his decision to do so.

Neither Person A nor the two men standing near him at the time of the incident, Person B (who was next to Person A) and Person C (who was further back in the driveway), appeared to testify. Instead, their prior hearsay statements were admitted into evidence. Specifically, on the date of the incident each of the individuals signed supporting depositions prepared by the [REDACTED] Police Department summarizing the witnesses' accounts of what transpired. Additionally, Sergeant Megan Fortunato, an NYPD investigator, recorded phone interviews with each of the three men in July of 2018. The recording of the interview with Person C was admitted into evidence; however, the recordings of the other two interviews malfunctioned, and so Sergeant Fortunato provided a summary of what was said to her during each interview. Hearsay evidence is admissible in an administrative tribunal, and a case may be

proven with such evidence provided it is found to be sufficiently reliable and probative on the issues to be determined. See *Ayala v. Ward*, 170 A.D.2d 235 (1<sup>st</sup> Dept. 1991); *In the Matter of 125 Bar Corp v. State Liquor Authority of the State of New York*, 24 N.Y.2d 174 (1969). In the absence of live testimony from the three individuals, this tribunal carefully reviewed the prior statements of Person A, Person B, and Person C in conjunction with the other credible evidence presented at trial.

In his supporting deposition (Dept. Ex. 3), Person A stated that he was holding his

[REDACTED] infant in his arms at the time he told Respondent to stop at the stop sign. Respondent exited his vehicle and insisted that he did stop at the sign. According to Person A, Respondent lifted his shirt, revealing a black handgun in his waistband, and said to Person A "Do we have a problem here?" Respondent then removed the handgun, pointed it in Person A's direction in a low position, and again asked if they had a problem. Person A feared for his safety, and told

him, "I don't have a problem," at which point Respondent returned to his vehicle and left the scene. According to Sergeant Fortunato, Person A made a similar statement to her in July of 2018 regarding how Respondent "aggressively stated 'Do we have a problem here,' while displaying the firearm." In addition to what he stated in his original deposition, Person A told Sergeant Fortunato that there were approximately 15-20 children in the yard playing. During his encounter with Respondent, Person A was holding his child in one arm, and a beer in his other hand. Person A did not know at the time that Respondent was a police officer. (Tr. 71-72)

In his supporting deposition (Dept. Ex. 4), Person B also stated that

Respondent exited his vehicle and said, "Do we have a problem here?" Person B observed Respondent pull up his shirt, exposing a black handgun, and again asked if there was a problem. Respondent drew the gun from his waistband and pointed it in a low position. Respondent then

got back inside his car and left the scene. According to Sergeant Fortunato, Person B made essentially the same statement to her in July of 2018. (Tr. 70-71, 77)

In his supporting deposition (Dept. Ex. 2), Person C stated that from the yard he observed the car pass through the stop sign. Respondent exited the vehicle and approached Person A and Person B, and asked, "Is there a problem?" Respondent lifted his shirt and gestured at something in his waistband, though Person C could not identify the object. Person C then observed Respondent pull a black handgun from his waistband and point it at Person A, who had his [REDACTED] baby in his arms. Person C was frightened for Person A and the numerous kids that were playing in the driveway. As Respondent got back in his car and drove off, Person C gathered up the kids and brought them into the yard.

When he was interviewed by Sergeant Fortunato on July 2, 2018, Person C provided essentially the same account. Additionally, Person C stated that he initially heard Person A yell toward Respondent to slow down. At the point where Respondent was pointing his gun, Person A appeared "frozen with fear" as he was holding his daughter and a beer. (Dept. ex. 5A at 5-7)

[REDACTED] Detective Robert Leonard, who was a police officer at the time of the incident, testified that when he arrived on the scene, Person A told him what had transpired, which was essentially the same account as in the supporting deposition. A short time later, Leonard observed Respondent up the block and went to speak with him about the witnesses' allegations that he had pulled a gun on them. Respondent answered that he does not take his gun out from his house; rather, he leaves it locked upstairs in his home. Respondent added that during the incident, the only object that he took out was his cell phone. [REDACTED]

[REDACTED] According to Leonard, Respondent was cooperative and did not appear to be intoxicated. (Tr. 23-24, 32-33, 37-38, 42)

Sergeant Christopher Skartsiaris of the [REDACTED] Police Department testified that when he arrived on the scene, he heard Respondent tell Leonard that he took out his cell phone during the incident, but did not admit to drawing his firearm. Sergeant Skartsiaris observed that there was a kids party going on at the location, with more than 20 children present. (Tr. 45-46)

Sergeant Fortunato testified that she conducted a Department interview of Respondent on May 21, 2018. A recording of that interview, and the accompanying transcript, were admitted into evidence (Dept. Ex. 6 and 6A). It is alleged that Respondent made an inaccurate statement during that interview regarding his reason for exiting his vehicle. Specifically, Respondent stated, "Next thing I know, because my window is rolled up, next thing I know he's waving trying to get my attention. I figured perhaps he needed help of some kind. I put my vehicle in park. I got out of the vehicle to see what he wanted." (Dept. Ex. 6A at 4) (Tr. 73, 80)

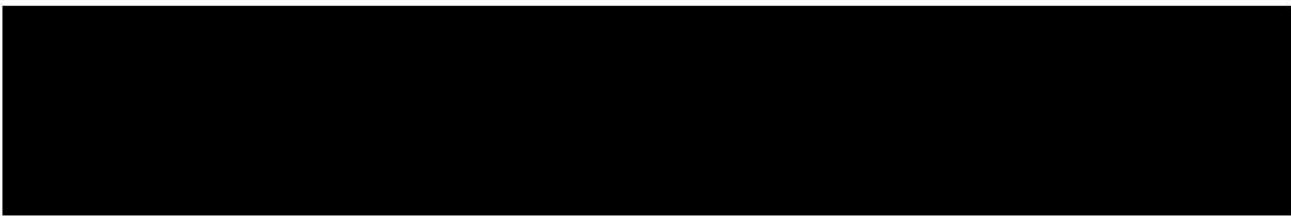
Respondent testified that at the time he "rolled" through the stop sign he was on his way to the gas station, [REDACTED]. When he saw Person A waving at him, Respondent initially thought it might be a friendly wave from someone who recognized him. When he observed Person A continue to flail his arms, Respondent thought that maybe he needed assistance, and so he stopped his vehicle and got out "with the most benevolent of intentions." Up until that point, Respondent could not hear what Person A was saying since Respondent's car window was rolled up. (Tr. 127-29, 144-45, 147-48, 151-52)

As he exited his vehicle, Respondent asked if everything was okay; he denied ever stating, "Do we have a problem?" Person A yelled at him, "Motherfucker, do you see the stop sign? There's a stop sign you piece of shit." Respondent noticed that Person A, who he described as "twice my size," had a "weapon" in his hand, namely a glass beer bottle, though Person A never raised the bottle above his head, and never verbally threatened Respondent. Respondent claimed that his only focus was on the two men, and that he did not even notice that

there were children at the location. As Person A and Person B walked toward Respondent, Respondent told them, "Gentlemen, I'm a neighbor [REDACTED]." The two men continued to advance, and Respondent twice stated, "Gentlemen, please stop approaching me." (Tr. 129, 133-34, 153, 158, 172-73, 176, 182).

According to Respondent, the two individuals moved to within 8-10 feet of him. Respondent, fearing for his safety, took a step back and felt himself against his car. He drew his firearm and pointed it toward the ground with his finger off the trigger, while he held up his left hand signaling the men to stop. Respondent testified that he never had time to identify himself as a police officer, which he now realizes was a mistake. Person A and Person B stopped immediately and retreated toward the house, and Respondent got back inside his vehicle and drove away, which he believed was the safest course of conduct. (Tr. 135-38, 143, 159-61, 166-67, 171)

Rather than call in the incident, Respondent first drove to the gas station to put oil in his car, used the time to calm down, then returned home where he planned to notify the Department: Respondent testified that this delay in reporting was another mistake on his part. However, upon returning home, Respondent learned that the [REDACTED] police already had responded. He went inside, secured his firearm, then came back out and waved the officers over with the intention of filing a complaint for being menaced. Respondent could not recall telling the [REDACTED] police that he did not pull out his firearm; he recalled only that he told them that he did not have a chance to pull out his phone to call for police assistance during the incident. (Tr. 139-41, 145, 173-75, 185-86)



During his trial testimony, Respondent was not specifically asked whether he saw that Person A was holding his infant daughter during the encounter. However, in his Department interview, Respondent stated, "I do not recall seeing any children at the location or anyone holding a child." (Dept. Ex. 6A at 7).

Respondent also called two character witnesses. Captain Joseph Tompkins, who was Respondent's lieutenant at the 17 Precinct from 2013-2015, testified that Respondent is an "upstanding, hard-working, productive" member of the Department. He described Respondent as a "good person," whose interactions with the public were "nothing but positive." According to Captain Tompkins, Respondent had no negative interactions with the public, and is the kind of kind and compassionate person that the Department needs. (Tr. 103-06) Similarly, Captain Denis O'Hanlon, who was partners with Respondent for about four years beginning in 2009, testified that Respondent was "very good with interacting with the public," and they never had a CCRB complaint filed against them. He described Respondent as "very sweet" to the people with whom he interacted, someone who put people at ease. According to Captain O'Hanlon, Respondent was "nothing but respectful" in his dealings with fellow officers as well as the community, a "great police officer," who did his job dutifully. (Tr. 111-13)

Additionally, Respondent offered into evidence a screenshot of a story with a photograph showing him feeding a homeless man's dog while on patrol in 2014 (Resp. Ex. B).

Specification 2 charges Respondent with wrongfully engaging in a verbal dispute with Person A, while Specification 1 alleges that Respondent inappropriately displayed his firearm during that dispute. Although neither Person A, Person B, nor Person C appeared to testify, they did provide multiple statements to both the [REDACTED] police and an NYPD investigator regarding the incident that occurred. Those statements were essentially consistent in describing what transpired. Respondent, himself, confirmed many of these details, starting with

an acknowledgement that he "rolled" the stop sign, exited his vehicle, and exchanged words with Person A and Person B before drawing his firearm. The [REDACTED] police witnesses also corroborated details of what occurred. To be sure, it is preferable to have testimony from live witnesses, where opposing counsel has the opportunity to cross-examine, and the court can observe the demeanor of the witnesses. But in light of the consistency of the statements through multiple tellings, and the additional corroboration, I credit the witnesses' hearsay accounts regarding what took place during the encounter.

Indeed, counsel for Respondent concedes that the version of events provided by the three individuals was basically accurate; counsel argues, however, that what's significant here is that Respondent perceived those events differently than the men. Specifically, Respondent viewed the behavior of Person A and Person B as threatening his safety, and so he acted reasonably by drawing his firearm, which successfully defused the situation.

Having reviewed the accounts provided by the three men, while also giving careful attention to the testimony of the [REDACTED] police officers and Respondent, I find that Respondent's actions were inappropriate to the situation. I reject Respondent's claim that he initially exited his vehicle "with the most benevolent of intentions" because he believed the men needed help; from the descriptions provided by the witnesses, it was clear that Respondent was confrontational immediately upon getting out of his car, denying that he ran the stop sign and saying to them, "Do we have a problem here." Respondent followed that by showing the men his firearm and actually drawing it from his waist.

The act of lifting his shirt to reveal his firearm was a deliberate and calculated action by Respondent. So, too, was his decision not to announce himself as a police officer, which calls into question Respondent's after-the-fact claim that he was in fear for his safety. Respondent then further escalated the situation by drawing his firearm. Under these specific circumstances, I

find that Respondent was acting aggressively, not defensively. Although Person A did have a bottle of beer in one hand, there was no credible evidence that he was threatening to use the bottle as a weapon at any time during this encounter, and he never verbally threatened Respondent. Moreover, given their close proximity, I find it more likely than not that Respondent saw that Person A was holding his [REDACTED] daughter in his other arm, making Respondent's claim that he reasonably feared for his safety even less plausible.

Respondent's account was further undermined by his actions after the incident. The [REDACTED] police officers credibly testified that in the immediate aftermath of the encounter, Respondent denied that he drew his firearm during the incident, which further calls into question the trustworthiness of Respondent's narrative. Similarly, Respondent's decision not to immediately call in a report of the incident contradicts his claim that he felt that he was being menaced.

As such, the credible evidence has established that Respondent, [REDACTED] wrongfully engaged in a verbal dispute with Person A, and that he also inappropriately displayed his firearm to the civilians at the scene. Accordingly, I find Respondent guilty of Specifications 1 and 2.

Specification 3 charges Respondent with making inaccurate statements during his Department interview on May 21, 2018. Specifically, it is alleged that Respondent misstated his true reason for stopping and exiting his vehicle. In his interview, Respondent claimed that he believed he was being flagged down because Person A needed assistance. Respondent stood by that explanation at trial.

The Department Advocate counters that Respondent's only reason for getting out of the car was to confront Person A for yelling at him about the stop sign. The Advocate notes that

Person A would have had no reason to know that Respondent was a police officer, since he was in his personal car, in civilian clothes, with no visible indication that he was a member of service.

This tribunal agrees with the Advocate's assessment. As discussed above, Respondent's actions upon exiting his vehicle run contrary to his claim that he was only trying to help. From the credible witness statements of the three men, there was nothing in Respondent's behavior that suggested he exited his car with the intention of providing assistance to Person A. Rather, Respondent was immediately confrontational in both his words and his actions toward the men. Since Respondent provided an inaccurate account during his Department interview, I find him guilty of Specification 3.

Specification 4 charges Respondent with failing to remain on the scene and failing to notify the Operations Unit regarding the incident. Section 212-32 of the Patrol Guide requires an off duty member of service involved in an unusual occurrence to "remain at the scene of incident when feasible and consistent with personal safety." If remaining at the scene is inappropriate, and the incident occurs outside the City, the MOS may leave the scene, and then must "promptly notify the Operations Unit."

It is undisputed that Respondent neither remained at the scene nor called Operations. Respondent's explanation for leaving was that he was concerned for his safety. He also maintained that he intended to call in the incident once he returned home, but then learned that local police were already on the scene. However, as discussed above, I found Respondent's claim that he feared for his safety to be exaggerated and contradicted by the facts. Under the circumstances, it was not reasonable to conclude that Person A, who was holding an infant at the time, posed a threat to Respondent's safety. Once Respondent drew his firearm, the men retreated toward the house, and Respondent could have remained at the scene and called in the incident.

In the very least, if Respondent felt the need to leave the location, his obligation was to call Operations promptly, which he failed to do. Instead, Respondent first went to the gas station, which undercuts his claim that he was the victim of an offense, and suggests that he did not feel any urgency to report what had occurred. He then proceeded home where he learned of the police presence from a neighbor. By waiting so long to report what had transpired, Respondent's actions ran afoul of the guidelines requiring timely notification. Accordingly, I find Respondent guilty of Specification 4.

### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. In 2008, Respondent was placed on dismissal probation following an arrest for slashing someone's tire; Respondent explained that he was immature [REDACTED]

[REDACTED] Respondent has earned nine medals for Excellent Police Duty.

Respondent has been found guilty of all four specifications. The Department Advocate recommends that Respondent, [REDACTED] should be dismissed from the Department. Counsel for Respondent argues for a lesser penalty, noting that Respondent is a different person than the one who was involved in the 2007 incident, and that in the present case Respondent candidly acknowledged that some of his actions were wrong.

On the one hand, this tribunal is mindful that two character witnesses, Department executives, spoke highly of Respondent in describing him as an asset to the Department.

Respondent, himself, noted that he volunteered to go to the traffic enforcement unit because it allowed him an opportunity to deal with the public and give people a better impression of police officers. However, that portrayal of Respondent is difficult to square with what happened in [REDACTED] on May 28, 2017, where Respondent failed to control his emotions and created a dangerous situation, not only for the adults he confronted, but for the children in the area.

It is particularly troubling how Respondent caused the situation to escalate when it was readily preventable in the first place. Respondent could simply have ignored the remarks and continued on his way. Instead, he overreacted to being yelled at for his driving, and aggressively confronted Person A, who was holding his six-month old daughter in his arm at the time. Without identifying himself as a police officer, and without police necessity, Respondent lifted his shirt to reveal his firearm, and then drew his weapon as well. Respondent then exacerbated the situation by failing to promptly report what occurred, and making inaccurate statements at his Department interview.

Police officers are entrusted with the responsibility of ensuring the safety and well-being of members of the public. Respondent did just the opposite here, needlessly creating a potentially deadly confrontation on a residential street in [REDACTED] that left civilians in extreme fear for their safety. With his actions on May 28, Respondent demonstrated that he lacked the self-control and sound judgment required of members of the Department. Taking into account the facts and the circumstances in this matter, I recommend that Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,



Jeff S. Adler  
Assistant Deputy Commissioner Trials

**APPROVED**  
  
FEB 27 2020  
DERMOT SHEA  
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER SEAN MAXWELL  
TAX REGISTRY NO. 937051  
DISCIPLINARY CASE NO. 2017-17485

Respondent was appointed to the Department on January 10, 2005. On his last three annual performance evaluations, he received 4.0 overall ratings of "Highly Competent" for 2014, 2015 and 2016. He has received nine medals for Excellent Police Duty.

[REDACTED]

In 2008, Respondent forfeited 30 pre-trial suspension days, was placed on one-year dismissal probation [REDACTED] for slicing the left-rear tire of a vehicle, without justification, while off-duty. In connection with the instant matter, Respondent was placed on Level 2 Discipline Monitoring on July 24, 2017; monitoring remains ongoing.

For your consideration.

Jeff S. Adler  
Assistant Deputy Commissioner Trials